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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------------|
| 10/501,163 | 07/12/2004 | Walter Keller | 3002 | 5205 |
| 7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743 | | 02/07/2008 | EXAMINER AHMED, HASAN SYED | |
| | | | ART UNIT 1618 | PAPER NUMBER |
| | | | MAIL DATE 02/07/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,163

Applicant(s)

KELLER ET AL.

Examiner

Hasan S. Ahmed

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 12, 13, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

- Receipt is acknowledged of applicants' amendment and remarks, which were filed on 19 November 2007.
- The 35 USC 112, 1st, 2nd paragraph, and 35 USC 101 rejections of the 8 February 2007 Office action are withdrawn in view of the amendment and remarks.

* * * * *

Election/Restrictions

In the remarks filed on 19 November 2007, applicants disagree with withdrawal of the claims by amendment in the previous Office action. Applicants argue that unity of invention exists because the instant application claims natural zein while the prior art does not teach unhydrolyzed zein (see paragraph bridging pages 4 and 5).

As stated above, this argument is not persuasive because applicants have not shown any functional difference between unhydrolyzed zein and the hydrolyzed zein of the prior art. Structurally, the natural zein of the prior art is intentionally cleaved while the natural zein of the instant application does not go through a cleavage step; this is the only difference between hydrolyzed and unhydrolyzed natural zein.

The natural zein disclosed by Morawsky may have a molecular weight as large as 20,000 (see col. 2, line 49). Applicants have not shown that their natural zein has a molecular weight larger than 20,000; nor have applicants shown unexpected results vis-à-vis the prior art. As such, examiner respectfully submits that the prior art reads on the instant application.

* * * * *

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 12, 13, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morawsky et al. (U.S. Patent No. 5,518,717).

The Morawsky et al. reference discloses the method of improving the condition of hair with natural zein of instant claim 18 (see col. 1, lines 8-13). The reference discloses the solution of instant claim 12 (see example 4).

No patentable weight is given to the future intended use recited in instant claim 4.

Morawsky et al. explain that natural zein is beneficial in cosmetic compositions because it is soluble and/or dispersible in alcohol-water solvent systems and possesses good film forming properties (see col. 2, lines 55-58).

While Morawsky et al. do not explicitly teach the ranges of instant claims 13, 18, and 19, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable percentages through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in concentration and temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. "[W]here the general conditions of a

Art Unit: 1618

claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant ranges.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose use of natural zein for improving the condition of hair, as taught by Morawsky, et al. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it is soluble and/or dispersible in alcohol-water solvent systems and possesses good film forming properties, as explained by Morawsky, et. al.

* * * * *

Response to Arguments

Applicants' arguments filed on 2 August 2007 have been fully considered but they are not persuasive.

Applicants argue, "[w]ith the definition of zein as "unhydrolyzed protein obtained from corn" in new claim 18, a clear distinction over the hydrolyzed zein of the prior art is provided." See remarks, page 8.

As stated above, this argument is not persuasive because applicants have not shown any functional difference between unhydrolyzed zein and the hydrolyzed zein of the prior art. Structurally, the natural zein of the prior art is intentionally cleaved while the natural zein of the instant application does not go through a cleavage step; this is the only difference between hydrolyzed and unhydrolyzed natural zein.

The natural zein disclosed by Morawsky may have a molecular weight as large as 20,000 (see col. 2, line 49). Applicants have not shown that their natural zein has a molecular weight larger than 20,000; nor have applicants shown unexpected results vis-à-vis the prior art. As such, examiner respectfully submits that the prior art reads on the instant application.

* * * * *

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

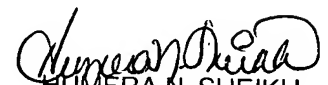
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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


HUMERA N. SHEIKH
PRIMARY EXAMINER